

## **Procedures for Family Transfer Exemption Claims**

The Gallatin County Subdivision Regulations (as amended February 7, 1998) provide the following:

- “Certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the [Montana Platting and Subdivision] Act, Section 76-3-101 et. seq. MCA.” (section 14.A).
- “At the hearing by the Commission . . . , the Claimant may present evidence in support of the exemption.” (Section 14.B.5) (Attorney General opinion further provides that the Claimant has the burden of proof in satisfying the Commission that the exemption claim is appropriate. (40 A.G. Op. No. 16)
- “In assessing the Claimant’s purpose the Commission will evaluate all relevant circumstances including the nature of the Claimant’s business, the prior history of the particular tract in question and the proposed configuration of tracts if the proposed exempt transactions are completed.” (Section 14.b.7)

In order to prevent abuses of the family transfer exemption, claims will be evaluated as follows:

- A. Applicant submits complete application to Planning Department.
- B. Planning Department reviews application materials for completeness and appropriateness of exemption.
- C. Planning Department determines that application is complete and acceptable.
- D. Planning Department prepares staff report and schedules consideration of exemption claim with County Commission. Exemption claim is placed on Commission’s regular agenda.
- E. Staff member presents a summary of the proposed division of land and any questions about the Claimant’s potential intent to evade subdivision review.
- F. Commission Chair requests that Claimant (or representative with power of attorney) come forward, and administers the following oath:

DO YOU SOLEMNLY SWEAR [OR AFFIRM] THAT THE  
TESTIMONY THAT YOU ARE ABOUT TO GIVE ABOUT THE  
\_\_\_\_\_ FAMILY TRANSFER EXEMPTION IS THE  
TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE  
TRUTH, SO HELP YOU GOD?

G. Commission members ask questions about all relevant circumstances, aimed at determining whether the exemption claim is an attempt to evade subdivision review.

Questions may include:

1. Are you or any of your immediate family real estate professionals, developers, builders, etc?
2. Have you made prior subdivision exemption claims on any property in Gallatin County?
3. Is your primary residence located on this parcel?
4. Do you own more than one parcel in Gallatin County?
5. Why are you proposing this division of land?
6. What is the history of this tract?
7. How long have you owned or had an interest in it?
8. Do you own this parcel free and clear?
  - a. If not, tell us about your mortgage or other lending agreement?
9. Are you delinquent at all with regard to the payments for this property?
10. At any time in the last three years have you been delinquent in your payments for this property?
11. Does the retirement of debt influence your desire to divide this land?
12. Was the parcel created or affected by a previous exemption?
13. Please describe any previous family transfers in which you or the intended recipients have been involved.
14. Have you (or a recent owner) previously expressed an interest in subdividing the parcel?

- a. If yes, why didn\_t you (or the recent owner) pursue subdivision?
- 15. Have you previously attempted to sell any portion of this parcel?
  - a. When and why did you attempt to sell it?
  - b. When and why did you decide not to sell it?
- 16. Are any persons other than your immediate family members interested in purchasing or developing any of the tracts involved in this division of land?
- 17. Have you, or your immediate family members, had any discussion with a person interested in purchasing a portion of your land?
- 18. Other than the intended disposition set forth in your application on file with the Planning Department, is there any type of agreement, oral or written, regarding the creation, sale or development of the tracts involved in this division of land?
- H. County Commission evaluates whether the claim is an appropriate exemption or an attempt to evade the Montana Subdivision and Platting Act and/or the Gallatin County Subdivision Regulations.
- I. If approved, Chair signs survey (and/or additional documents) confirming the Commission's approval of the exemption, then returns documents to Planning Department.
- J. Claimant picks up signed documents from Planning Department, then records documents with Clerk and Recorder.
- K. The County may file a court action to set aside land transfers which violate either the Montana Subdivision and Platting Act or the County's Subdivision Regulations. Applicants or persons acting on their behalf who misrepresent their intentions regarding a family transfer exemption are subject to criminal prosecution as provided in section 8 of the Application for Subdivision Exemption Claim form.